

July 12, 2019

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **NOTICE OF EX PARTE**

**WT Docket No. 17-79:** *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*

**WC Docket No. 17-84:** *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

Competitive Carriers Association (“CCA”)<sup>1</sup> submits this letter to update the record in the above-referenced proceedings. CCA applauds the Federal Communications Commission (“FCC” or “Commission”) for its significant efforts to promote the infrastructure reform necessary for the United States to lead the world in 5G development. Consumers and local communities already are benefiting from the immense benefits that stem from next-generation broadband deployment.<sup>2</sup> However, certain obstacles continue to impede important upgrades and construction. The Commission can help address these remaining barriers by clarifying certain provisions of Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012 and the Commission’s implementing regulations. The Commission also should modernize other regulations through further targeted action.

First, CCA members continue to encounter difficulties in certain jurisdictions arising out of the Commission’s “deemed granted” requirement when a locality has “fail[ed] to approve or deny a request seeking approval” of an eligible facilities modification.<sup>3</sup> Despite complying with the Commission’s requirement that an applicant notify the “applicable reviewing authority” of the deemed grant,<sup>4</sup> CCA members often cannot receive outstanding building permits or other certifications because they do not receive paperwork to

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents vendors and suppliers that provide products and services throughout the communications supply chain.

<sup>2</sup> Recent studies show that reduced siting barriers and fees could lead providers to invest over \$2 billion in network deployments, with 97 percent of that investment focused in rural areas. See CTIA, “A Year of Accelerated Wireless Infrastructure Investment” (rel. Mar. 22, 2019), available at <https://www.ctia.org/news/a-year-of-accelerated-wireless-infrastructure-investment>.

<sup>3</sup> 47 C.F.R. § 1.6100(c)(4). These rules were originally codified at 47 C.F.R. § 1.40001, but were redesignated to § 1.6100 by the Commission in 2018. See *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, 33 FCC Rcd. 9,088, 9,159 n.409 (rel. Sept. 27, 2018).

<sup>4</sup> 47 C.F.R. § 1.6100(c)(4).

establish the grant of their facilities modification request. As a result, these jurisdictions effectively circumvent practical policies that were designed to speed deployment procedures even in cases where the deemed granted provision is applicable.

*Second*, uncertainty regarding the meaning of “concealment elements” in the Commission’s regulations, and the types of modifications that “defeat” them, is exacerbating deployment barriers.<sup>5</sup> An overly broad view of what constitutes a concealment element reflects an inaccurate reading of the current language.<sup>6</sup> For example, an interpretation that *any* change to the existing structure (e.g.: height, width, paint color, etc.) could be treated as defeating a concealment element contravenes the regulation’s intent and should not constitute a substantial change. The Commission should clarify that size-based concealment elements cannot be imposed to evade the specific, objective size criteria that the FCC adopted in 2014 to determine what qualifies as an eligible facilities modification, and that only an element identified in an initial application or approval as a concealment element qualifies as the same under the Commission’s regulations.

*Third*, CCA agrees with recent parties on record that the Commission should modernize its rules to permit minor, necessary expansions of existing sites to facilitate next-generation wireless services.<sup>7</sup> The current rules—which, as the Wireless Infrastructure Association explains, track industry standards from nearly two decades ago—regard “any excavation or deployment outside the current site” as a substantial change.<sup>8</sup> Collocation rules have resulted in the concentration of many facilities on fewer towers, and so deploying high-volume 5G facilities requires the ability to make minor expansions to towers easily and efficiently. To make that possible, CCA encourages the Commission to amend the rules to provide that excavations or deployments within certain size and distance parameters do not constitute substantial changes.<sup>9</sup> As CCA has previously noted, the current, outmoded approach disproportionately affects “CCA’s vendor members and other stakeholders deploying tower and collocated equipment” and risks frustrating the Commission’s important work to date.<sup>10</sup>

*Fourth*, CCA members have encountered a number of difficulties with tower siting on federal lands, significantly slowing deployment in those areas. For example, the National Park Service requires an individual appraisal to establish occupancy fees for all right-of-way permits, a process that can take 6-12 months and can be stymied by a lack of comparable market data from which to draw. The use of a linear fee schedule would

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<sup>5</sup> See *id.* § 1.6100(b)(7)(v).

<sup>6</sup> See, e.g., Letter from Joshua S. Turner, Counsel, Crown Castle International Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-79, WC Docket No. 17-84, at 2 (filed June 17, 2019) (“Crown Castle Ex Parte”); Letter from Matthew H. Mandel, Head of Legislative Affairs/Acting Head of Government Affairs, Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-79, WC Docket No. 17-84, at 2 (filed May 20, 2019) (“WIA Ex Parte”).

<sup>7</sup> See WIA Ex Parte at 3-6.

<sup>8</sup> 47 C.F.R. § 1.6100(b)(7)(iv).

<sup>9</sup> See, e.g., Crown Castle Ex Parte; WIA Ex Parte at 6 (proposing that the Commission consider excavation a substantial change “only if it occurs 30 feet or more outside the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site”).

<sup>10</sup> Letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-79, WT Docket No. 15-180, WC Docket No. 17-84, at 4-5 (filed Mar. 15, 2018).

streamline these processes, which is what some other agencies use to establish occupancy fees.<sup>11</sup> On federal lands administered by the Bureau of Land Management and the Forest Service, meanwhile, projects are frequently delayed because the agencies lack sufficient resources and capacity to handle the volume of applications that they must process. Despite CCA members' efforts to escalate issues like these "substantial delays" to decision-makers at those agencies,<sup>12</sup> these issues persist, and they unnecessarily delay important progress in the 5G transition.

The Commission has made great strides in clearing the path for swift and efficient 5G deployment. CCA encourages the Commission to continue taking common-sense steps forward so that the United States can continue to lead the world into the 5G era.

This letter is being filed electronically, in accordance with Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Alexi Maltas

Alexi Maltas  
SVP & General Counsel  
Competitive Carriers Association

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<sup>11</sup> See, e.g., U.S. Department of the Interior, Bureau of Land Management, *Communication Sites*, <https://www.blm.gov/programs/lands-and-realty/communication-sites> (last visited July 3, 2019) ("The BLM uses a rent schedule to calculate the rent for communication site rights-of-way.").

<sup>12</sup> Comments of Competitive Carriers Association at 4, Docket No. FSA-2019-0004 (filed Apr. 1, 2019), *available at* <https://www.regulations.gov/document?D=FSA-2019-0004-0009>; see also, e.g., Comments of Competitive Carriers Association at 2-3, Docket No. ORMS-1797 (filed Feb. 2, 2018) (identifying "uniquely difficult" review processes at Forest Service, including unexplained denials and years-long review times).